

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 18-23538-rdd

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5 In the Matter of:

6

7 SEARS HOLDINGS CORPORATION,

8

9 Debtor.

10 - - - - - x

11

12 United States Bankruptcy Court

13 300 Quarropas Street, Room 248

14 White Plains, NY 10601

15

16 January 28, 2020

17 10:01 AM

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20

21 B E F O R E :

22 HON ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: A. VARGAS

1 HEARING RE Notice of Agenda of Matters Scheduled for Hearing
2 on January 28, 2020 at 10:00 a.m. (ECF 6406)

3
4 Third Interim Fee Application of Deloitte Tax LLP for
5 Compensation for Services Rendered as Tax Services Provider
6 from July 1, 2019 through October 31, 2019 for Deloitte Tax
7 LLP, Other Professional, period: 7/1/2019 to 10/31/2019,
8 fee:\$141,363.50, expenses: \$0.00 (ECF 6137)

9
10 Second Interim and Final Fee Application of Lazard Freres &
11 Co. LLC, Investment Banker to the Debtors, for the Period
12 from October 15, 2018 through October 14, 2019 for Lazard
13 Freres & Co. LLC, Other Professional, period: 10/15/2018 to
14 10/14/2019, fee:\$21,900,000, expenses: \$110,924.96 (ECF
15 6138)

16
17 Third Application for Interim Professional Compensation of
18 Alvarez & Marsal North America, LLC for Compensation Earned
19 and Expenses Incurred for the Period from July 1, 2019
20 through and Including September 30, 2019 for Alvarez &
21 Marsal North America, LLC, Other Professional, period:
22 7/1/2019 to 9/30/2019, fee:\$6,877.50, expenses: \$12.70 [ECF
23 No. 6183]

1 Third Interim Fee Application of Prime Clerk LLC, as
2 Administrative Agent to the Debtors, for Services Rendered
3 and Reimbursement of Expenses for the Period from July 1,
4 2019 through October 31, 2019 for Prime Clerk LLC, Other
5 Professional, period: 7/1/2019 to 10/31/2019,
6 fee:\$446,260.50, expenses: \$4,801.46 [ECF No. 6214]

7
8 Application for Interim Professional Compensation Second
9 Joint Application of Paul E. Harner, as Fee Examiner and
10 Ballard Spahr LLP, as Counsel to the Fee Examiner for
11 Interim Allowance of Compensation for Professional Services
12 Rendered and Reimbursement of Actual and Necessary Expenses
13 Incurred from July 1, 2019 through October 31, 2019 for Fee
14 Examiner, Other Professional, period: 7/1/2019 to
15 10/31/2019, fee:\$877,382.00, expenses: \$892.33 [ECF No.
16 6215]

17
18 Third Interim Fee Application of Paul, Weiss, Rifkind,
19 Wharton & Garrison LLP, Attorneys for the Debtors and
20 Debtors in Possession, for the Period from July 1, 2019
21 through and including October 31, 2019 [E for Paul, Weiss,
22 Rifkind, Wharton & Garrison LLP, Debtor's Attorney, period:
23 7/1/2019 to 10/31/2019, fee:\$536,326.00, expenses:
24 \$276,422.10 [ECF No. 6225]

25

1 Third Application for Interim Professional Compensation of
2 Young Conaway Stargatt & Taylor, LLP as Conflicts Counsel
3 for the Debtors for Young Conaway Stargatt & Taylor, LLP,
4 Other Professional, period: 7/1/2019 to 10/31/2019,
5 fee:\$23,128.50, expenses: \$128.71 (ECF 6226)

6
7 Third Interim Application of FTI Consulting, Inc., Financial
8 Advisor to the Official Committee of Unsecured Creditors of
9 Sears Holdings Corporation, et al. for Interim Allowance of
10 Compensation and Reimbursement of Expenses for the Period
11 from July 1, 2019 Through October 31, 2019 for FTI
12 Consulting, Inc., Other Professional, period: 7/1/2019 to
13 10/31/2019, fee:\$1,103,980.00, expenses: \$1,446.45 (ECF
14 6229)

15
16 Third Interim Application of Houlihan Lokey Capital, Inc.,
17 Investment Banker to the Official Committee of Unsecured
18 Creditors, for Interim Allowance of Compensation for
19 Professional Services Rendered and Reimbursement of Actual
20 and Necessary Expenses Incurred from July 1, 2019 through
21 October 31, 2019 for Houlihan Lokey Capital, Inc., Other
22 Professional, period: 7/1/2019 to 10/31/2019,
23 fee:\$500,000.00, expenses: \$0.00 (ECF 6230)

24
25

1 Third Interim Fee Application of Akin Gump Strauss Hauer &
2 Feld LLP as Counsel to the Official Committee of Unsecured
3 Creditors for Allowance of Compensation for Services
4 Rendered and Reimbursement of Expenses for the Period of
5 July 1, 2019 through and Including October 31, 2019 for Akin
6 Gump Strauss Hauer & Feld LLP, Creditor Comm. Atty, period:
7 7/1/2019 to 10/31/2019, fee:\$5,384,047.00, expenses:
8 \$318,470.97 (ECF 6231)

9
10 Third Application of Weil, Gotshal & Manges LLP, as
11 Attorneys for Debtors, for Interim Allowance of Compensation
12 for Professional Services Rendered and Reimbursement of
13 Actual and Necessary Expenses Incurred from July 1, 2019
14 through and including October 31, 2019 for Weil, Gotshal &
15 Manges LLP, Debtors' Attorney, period: 7/1/2019 to
16 10/31/2019, fee:\$10,388,784.25, expenses: \$675,032.56 (ECF
17 6232)

18
19 Motion to Shorten Time/ Motion for an Order Shortening
20 Notice with Respect to Debtors Motion Pursuant to Federal
21 Rule of Bankruptcy Procedure 9019(a) for Entry of an Order
22 Approving Settlement Agreement with Transform Holdco LLC

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1 Motion to Approve / Debtors' Motion Pursuant to Federal Rule
2 of Bankruptcy Procedure 9019(a) for Entry of an Order
3 Approving Settlement Agreement with Transform Holdco LLC
4 [ECF No. 6327]

5
6 Statement /Hain Capital Investors Master Fund, Ltds Joinder
7 to Debtors Reply to Objection of Winiadaewoo to Stipulation
8 and Order by and among Debtors, Transform and Hain (related
9 document(s)6394, 6395)

10
11 Motion for Omnibus Objection to Claim(s) / Debtors' First
12 Omnibus Objection to Proofs of Claim (Satisfied Claims)
13 [ECF No. 4775]

14
15 Motion for Omnibus Objection to Claim(s) / Debtors' Fifth
16 Omnibus Objection to Proofs of Claim (Reclassification as
17 General Unsecured Claims with hearing to be held on
18 10/23/2019 at 10:00 AM at Courtroom TBA, White Plains
19 Courthouse (RDD) Responses due by 9/19/2019 (ECF 5031)

20
21 Motion for Omnibus Objection to Claim(s) / Debtors' Sixth
22 Omnibus Objection to Proofs of Claim (Satisfied Claims) with
23 hearing to be held on 10/23/2019 at 10:00 AM at Courtroom
24 TBA, White Plains Courthouse (RDD) Responses due by
25 9/26/2019 [ECF No. 5075]

1 Motion for Omnibus Objection to Claim(s) / Debtors' Seventh
2 Omnibus Objection to Proofs of Claim (Amended and Superseded
3 Claims) [ECF No. 5100]

4

5 Motion for Omnibus Objection to Claim(s) / Debtors' Eighth
6 Omnibus Objection to Proofs of Claim (Duplicate Claims) [ECF
7 No. 5101]

8

9 Motion by Nina and Gerald Greene for Relief from the
10 Automatic Stay [ECF No. 6212]

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12 Objection to Motion for Relief from Automatic Stay (related
13 document(s) 6212) (ECF 6366)

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

2

3 WEIL, GOTSHAL & MANGES LLP

4 Attorneys for the Debtors

5 767 Fifth Avenue

6 New York, NY 10153

7

8 BY: JARED R. FRIEDMANN

9 SUNNY SINGH

10 PHILIP L. DIDONATO

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12 AKIN GUMP STRAUSS HAUER & FELD LLP

13 Attorneys for Official Committee of Unsecured Creditors

14 One Bryant Park

15 New York, NY 10036

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17 BY: PHILIP C. DUBLIN

18 SARA L. BRAUNER

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20 LAW OFFICES OF PERRY R. CLARK

21 Attorney for Winia Daewoo Electronics, Inc.

22 825 San Antonio Road

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25 BY: PERRY R. CLARK

1 FOLEY & LARDNER LLP

2 Attorney for Hain Capital Investors

3 90 Park Avenue

4 New York, NY 10016

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6 BY: PAUL J. LABOV

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8 CLEARY GOTTlieb STEEN & HAMILTON LLP

9 Attorneys for Transform Holdco LLC and its affiliates

10 One Liberty Plaza

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13 BY: SEAN A. O'NEAL

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20
21 BY: JANICE I. DAUL

1 APPEARING TELEPHONICALLY:

2

3 RYAN M. BARTLEY

4 BRIAN BRAGER

5 ROBERT A. BRITTON

6 EDWIN H. CALDIE

7 PAUL E. HARNER

8 ANA LUCIA HURTADO

9 HOO RI KIM

10 TERESA LII

11 VINCENT J. MARRIOTT

12 CHANTELE D. MCCLAMB

13 NEVILLE N. REID

14 LEE J. REID

15 LEE J. ROHN

16 MICHAEL L. SCHEIN

17 LUCAS SCHNEIDER

18 PAUL SCHWARTZBERG

19 CHRIS STAUBLE

20 DENNIS STOGSDILL

21 PATRICIA A. WALSH

22 TODD M. ARNOLD

23 SOMA ISWAS

24 ALANA FRIEDBERG

25 TAYLOR B. HARRISON

1 ZACHARY D. LANIER
2 CATHERINE LOTEMPIO
3 RICK J. SZAMBEL
4 DAVID H. WANDER
5 SHIRA D. WEINER

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1 P R O C E E D I N G S

2 THE COURT: Please be seated. Okay, good morning.

3 MR. SINGH: Good morning.

4 THE COURT: In Re Sears Holdings Corporation, et
5 al.

6 MR. SINGH: Good morning, Your Honor. Sunny
7 Singh, Weil Gotshal, on behalf of the Debtors. Your Honor,
8 we did file an agenda for today's hearing, and if it's okay
9 with the Court, I'll just proceed down in the order of the
10 agenda.

11 THE COURT: That's fine.

12 MR. SINGH: First, we do have a number of fee
13 matters on today, the various applications of each of the
14 professionals. And I think some of the professionals are
15 here today, and as well as others are on the phone.

16 I'm happy to proceed however you'd like, Your
17 Honor. We did not receive any objections. The fee
18 applications have all gone through the review of the fee
19 examiner. The order does contain the language we've had in
20 the prior interim orders that reserves the right of the fee
21 examiner to continue to review and object to the second
22 final applications that are being filed.

23 I would note there is one final application that's
24 on for today. It's the second interim and final application
25 of Lazard at ECF 6138. There was a representative of Lazard

1 here, and that application also has been reviewed by the fee
2 examiner. And to my understanding, there are no objections
3 to Lazard's fees.

4 THE COURT: Okay. Well, does anyone have anything
5 to say on the fee applications? I'll go through them. But
6 I just want to know --

7 MR. SINGH: Sure.

8 THE COURT: -- if anyone has anything to say on
9 them. Okay. I've been through each of the applications and
10 I'll just go through them seriatim as they appear on the
11 agenda.

12 As far as the two Deloitte applications, the one
13 for auditor and advisor services, and one for tax services,
14 I had no issues and will grant them.

15 On the Lazard application -- and I appreciate that
16 Lazard was retained under Section -- subject to the
17 qualifications of the order -- Section 328(a), or subject to
18 Section 328(a) of the Bankruptcy Code.

19 I had a question as to Lazard's continuing role in
20 the case after July. There was a Lazard declaration, which
21 was important for the 507(b) hearing, but this would cover
22 August through October as well. And there's a monthly fee
23 there, unlike with respect to the Houlihan Lokey
24 application, which comes up later, Houlihan being the
25 investment banker for the Committee.

1 The Lazard application didn't really give me a
2 good idea what Lazard was doing during those months. And
3 their hours are low for that three-month period, although
4 not negligible. Although it's hard for me to see whether --
5 you know, what it was that they did. And it's one thing to
6 say that a monthly fee is a market rate and it's approved,
7 but you know, at some point, you just have to stop.

8 And I don't know -- I mean, the fee examiner's
9 report on this really just covered it in one paragraph. And
10 I appreciate that the fee examiner said that he didn't have
11 an objection to Lazard's application for the last period,
12 which is the one that I'm talking about. And that's the
13 only issue I have with the application, but it's a
14 significant sum. It's \$1.4 million, although some portion
15 of that, I think, would be -- well, I wouldn't have a
16 problem with either. It's really the post-July period.

17 MR. SINGH: Your Honor, if we could come back to
18 that, we're just double checking. I am not positive, but I
19 think the 1.4 represents the holdback from sort of the
20 majority of the fee that was approved last time.

21 THE COURT: So were they charging, though --

22 MR. SINGH: I don't think --

23 THE COURT: -- the monthly fee for that --

24 MR. SINGH: -- they were charging --

25 THE COURT: -- for that period?

1 MR. SINGH: -- for those three months.

2 THE COURT: All right.

3 MR. SINGH: But we're just going to confirm.

4 THE COURT: Can we just -- that's fine.

5 MR. SINGH: I don't think that there were any
6 monthlies charged for that --

7 THE COURT: All right.

8 MR. SINGH: -- for those months.

9 THE COURT: Well, if that's the case, then --

10 MR. SINGH: But we will just double check.

11 THE COURT: -- then I'll do an Emily Litella and
12 say never mind. But I just wanted to make sure.

13 MR. SINGH: I mean, I could be wrong --

14 THE COURT: Okay.

15 MR. SINGH: -- (indiscernible)

16 THE COURT: Okay.

17 MR. HARNER: Your Honor, it's Paul Harner, the fee
18 examiner. Can I just break in to confirm exactly what was
19 just said? That's correct. That was --

20 MR. SINGH: Yeah.

21 MR. HARNER: -- both credited and --

22 THE COURT: All right.

23 MR. HARNER: -- and just as represented.

24 THE COURT: Okay. So Lazard stopped at July?

25 MR. SINGH: Right. That was my recollection.

1 THE COURT: All right.

2 MR. SINGH: Just in that --

3 THE COURT: All right.

4 MR. SINGH: Exactly. It was after July.

5 THE COURT: Well, that's fine. Then I will grant
6 --

7 MR. HARNER: And that's correct, Your Honor.

8 THE COURT: -- Lazard's application in the amount
9 sought.

10 MR. SINGH: Thank you, Your Honor.

11 THE COURT: I had previously approved -- as I
12 said, it's retention, subject to 328(a) of the code. That's
13 standard with the U.S. Trustee's carved out right, and it's
14 clear to me that they were performing substantial services
15 through July. So I'll grant that application, including on
16 a final basis. With a caveat, though, and I'll come back to
17 it, which applies to all of these applications.

18 I've been through the Alvarez & Marsal one. For
19 this period, it's very light, obviously. And I will grant
20 that application.

21 Similarly, I'll grant the Prime Clerk application.
22 This was a significant amount of work by Prime Clerk, but
23 that's understandable, since this was the period covered by
24 the plan solicitation.

25 I've also been through the fee examiner's fee

1 application. I guess the fee examiner doesn't review his
2 own application as an examiner, but as an applicant, but I
3 have. And although there was a significant amount of work
4 here, my looking behind it would really be second-guessing
5 the U.S. Trustee's application, which I granted to retain a
6 fee examiner. And I won't do that. So I'm granting that
7 application as well.

8 That leaves the Paul Weiss application for this
9 period. At first glance, the expenses seemed high, but
10 almost all of them were for "electronic discovery".

11 MR. SINGH: Yes.

12 THE COURT: Is someone on the phone for Paul Weiss
13 or here?

14 WOMAN 1: Your Honor, I'm from Paul Weiss.

15 THE COURT: Oh, okay. Fine. So what is
16 electronic discovery, just for the record?

17 WOMAN 1: So, Your Honor, as you know, we
18 represented the restructuring subcommittee.

19 THE COURT: Right.

20 WOMAN 1: And we retained electronic discovery
21 vendors to assist with the document productions

22 THE COURT: Okay. So, search terms --

23 WOMAN 1: Correct.

24 THE COURT: -- and the like?

25 WOMAN: Correct.

1 THE COURT: Okay. All right. That's fine. So,
2 based on my review, I'll grant this application as well, on
3 an interim basis.

4 WOMAN 1: Thank you, Your Honor.

5 THE COURT: The same goes for Young, Conaway, as
6 Conflicts Counsel, based on my review.

7 And then we turn to the Committee's professionals.
8 I've reviewed the FTI Consulting application and I did not
9 have any issues with the amount requested, having looked at
10 the time entries and seen the various tasks that FTI was
11 working on.

12 I had a similar issue initially with the Houlihan
13 Lokey application as investment banker for the Committee.
14 Are they still -- when did they stop?

15 MR. DUBLIN: Your Honor, Phil Dublin, Akin Gump,
16 for the Committee. As of the end of the October. So this
17 would be --

18 THE COURT: Okay. So they did work --

19 MR. DUBLIN: They will end up doing a final, but
20 this is their (indiscernible).

21 THE COURT: But they did work July through
22 October?

23 MR. DUBLIN: Correct.

24 THE COURT: But their -- as I said earlier, their
25 application details what they actually did. And it was

1 separate and apart from what FTI would have done?

2 MR. DUBLIN: Yes, Your Honor.

3 THE COURT: And it related, among other things, to
4 the 507(b) litigation and the administrative expense
5 analysis settlement?

6 DR. DUBLIN: That's correct, Your Honor.

7 THE COURT: Okay. And it wasn't duplicating FTI
8 on that?

9 DR. DUBLIN: That's correct.

10 THE COURT: Okay. All right. So I'll grant that
11 on an interim basis.

12 And then that leaves the two largest amounts,
13 which are the two main law firms. I have reviewed both the
14 Akin Gump and Weil Gotshal applications, and I will grant
15 each of them, based on that review. And again, the review
16 by the fee examiner, which I believe was looking at Mr.
17 Harner's and his firm's records on a monthly basis. So even
18 shorter than that, looking at the monthly statements, with a
19 fair amount of interaction on what was being charged.

20 The examiner has not objected to either of these
21 applications, nor has anyone else. So I'm granting each of
22 the applications. But here's the other caveat. At the
23 confirmation hearing, I directed a \$10 million holdback.
24 The applications don't address that.

25 MR. SINGH: Correct, Your Honor. Your Honor, what

1 we ended up doing -- just for the record -- the \$10 million
2 was already contributed out of the carveout account, and to
3 the general winddown account of the estate, so it could be
4 used for distributions and the like. So that money has come
5 over.

6 And the language in the confirmation order
7 provided that to the extent that there was later a shortfall
8 in the carveout account and certain admin dollars available
9 to pay the professionals in full, there would be an
10 allocation back, a prorated allocation at that time.

11 So I think, given that these are all being
12 approved, with the exception of Lazard on an interim basis,
13 that mechanic is in the confirmation order, we -- you know,
14 if we ever needed to go back and look and see if the \$10
15 million caused anybody to have a shortfall, that could be
16 addressed at the end, given that these are interim
17 applications.

18 So I'm not sure if we need language here, but we
19 could --

20 THE COURT: Well, I think we should put language
21 in that this --

22 MR. SINGH: Refers to the confirmation order?

23 THE COURT: -- this order is subject to --

24 MR. SINGH: Right.

25 THE COURT: -- the applicable -- whatever

1 paragraph it is in the confirmation order.

2 MR. SINGH: Certainly, Your Honor.

3 THE COURT: Okay. All right. So you can email
4 one order with Schedule A and B on each of these that covers
5 --

6 MR. SINGH: Yes, Your Honor.

7 THE COURT: -- that covers all of these together.

8 MR. SINGH: Certainly. We may just have a
9 separate order for Lazard's and say it's a final.

10 THE COURT: That's a final one that's --

11 MR. SINGH: Right.

12 THE COURT: Okay. Although, you can make it --

13 MR. SINGH: We can build it in. That's fine.

14 THE COURT: Yeah, you could build it in.

15 MR. SINGH: Yeah. Okay.

16 THE COURT: Okay.

17 MR. HARNER: Your Honor, it's Paul Harner. May I
18 be heard for just a moment?

19 THE COURT: Sure.

20 MR. HARNER: I just wanted to make clear that
21 although we have not objected to any of these interim
22 applications, we have been submitting preliminary reports,
23 and I was hoping that this was clear in our status report,
24 in an effort to resolve issues that we have identified in
25 some of the interim applications on a consensual basis.

1 Our goal from the outset has been to make sure
2 that we don't to involve the Court and that we can resolve
3 all of this consensually. But those discussions are
4 ongoing. So I want to make sure that the Court is clear
5 about the fact that our reservation of rights in each of the
6 interim orders on interim fee applications, as to final fee
7 applications, was solely to clarify that those kinds of
8 discussions are ongoing. And when we submit a final report,
9 what we hope we're going to be doing, rather than having any
10 objections that need to be resolved by the Court, is simply
11 indicating that those discussions that are ongoing have
12 become fruitful, and that we've reached agreements about
13 consensual reductions in prior fees applied for.

14 THE COURT: Okay. Yeah, I -- that was my
15 understanding from what you had filed, and I may have not
16 been clear when I referenced the fact that you have not
17 objected to these applications. I didn't want to leave the
18 impression -- and I'm sure that's why you spoke up -- that
19 you've signed off on them, and that your reservation of
20 rights isn't a true and full reservation of rights.

21 On the other hand, I don't think you identified
22 something -- or at least I didn't identify anything -- that
23 leaped out so genetically that you would object at this
24 point.

25 MR. HARNER: Yes, Your Honor. And to the extent

1 we would have, we certainly would have raised it by this
2 point. On the other hand, as I tried to clarify in that
3 status report, we have identified issues that do need to be
4 addressed. And we're having fruitful discussions with the
5 professionals about those, and we hope that we'll just be
6 filing a report that says we've reached agreement about
7 those issues.

8 THE COURT: That's fine. That's fine. I hope
9 that you can continue with that process, and we'll deal with
10 that when there are final applications.

11 MR. HARNER: Thank you, Your Honor. I just wanted
12 to be clear. Thank you.

13 THE COURT: Okay. Very well.

14 MR. SINGH: Thank you, Your Honor.

15 THE COURT: Okay.

16 MR. SINGH: That brings us next to Item Number 13
17 on the agenda, which is the Debtors' motion for approval of
18 a 9019 settlement with Transform Holdco LLC.

19 Now, Your Honor, just before addressing the merits
20 of the motion, we did have a related motion to shorten, and
21 that's identified at 13(a) ECF 6326.

22 THE COURT: Right.

23 MR. SINGH: And we -- while we were a couple of
24 days short on the hearing, Your Honor, we did give everybody
25 14 days to object. And as Your Honor probably saw, the UCC

1 has filed a statement in support. They were up to date
2 along the way. And we honestly haven't received too many
3 inbounds; a few from the administrative creditor
4 representatives, and we've kind of walked them through what
5 the settlement terms are. And there were no objections to
6 either motion. But I wanted to address the application
7 short first.

8 THE COURT: Okay. On that score, this was -- it's
9 dated January 10th. We're now on the 28th, so -- and I
10 would take oral objections today if anyone had one -- but
11 you're right. We are a couple of days short on the notice
12 to this hearing.

13 But given the fact that I scheduled the motion to
14 shorten, so that if someone did have an unresolved issue,
15 they could raise it today, and no one has done that -- and I
16 did that rather than just granting it ex parte and
17 scheduling the hearing -- I will grant the motion to
18 shorten, which is unopposed.

19 MR. SINGH: Thank you, Your Honor.

20 THE COURT: Okay.

21 MR. SINGH: Your Honor, with respect to the 9019,
22 you're very familiar with the facts and the disputes that
23 have come up between Transform and the estate following the
24 APA. The settlement, as outlined in the motion and attached
25 to the motion, is the product of literally months of

1 negotiations and back-and-forth between the parties,
2 including consultation with the Creditors' Committee. And
3 we believe we finally landed in a good spot that was
4 acceptable to everyone, and fair.

5 The Restructuring Committee came to approve this
6 settlement after extensive evaluation and analysis. And as
7 I mentioned, notably the UCC does support the deal.

8 We did file a declaration of Brian Griffith, from
9 M3. Mr. Griffith is here today in court and available for
10 live cross. For the record, I would like to move his
11 declaration into evidence at this time.

12 THE COURT: Okay. Does anyone want to cross-
13 examine Mr. Griffith on his declaration, which otherwise I
14 would take as his direct testimony? Okay. I've reviewed
15 the declaration. Clearly, there's support for the motion
16 itself. And I don't have any questions of Mr. Griffith, I
17 think. I think you'll be able to answer them for me.
18 Although, if not, you can check with him, obviously.

19 MR. SINGH: Certainly.

20 THE COURT: But I'll admit it as his direct
21 testimony.

22 MR. SINGH: Thank you, Judge.

23 (Declaration of Brian Griffith Admitted Into
24 Evidence)

25 MR. SINGH: So, really, Your Honor, I'll just do a

1 quick summary. I know that the facts are detailed in there,
2 including all the prior litigation and interim settlements.

3 But there were really three main issues that were
4 remaining after the prior rulings of the Court, all subject
5 to appeal, of course. But that was the cash reconciliation,
6 the amount of specified receivables delivered, and the
7 ordered inventory. And then we also had added on the
8 delivery of the one check for roughly \$5.5 billion, a tax
9 that came out of the last hearing before Your Honor.

10 There was an examiner appointed to assist the
11 Court with respect to those issues, other than the delivered
12 tax refund check. And we were sort of up and running until
13 we reached a settlement. So the examiner was shut down
14 quite early in the process, right around the time that we
15 reached the settlement agreement, or thought we were far
16 enough along.

17 Under the settlement, Your Honor, the estate will
18 get \$12 million in cash, and with respect to the disputes,
19 plus there's another \$1 million, roughly, for a Deloitte fee
20 reimbursement to the estate. That's \$13 million. And then
21 in addition, there's \$5.3 million approximately of utility
22 deposits.

23 As Your Honor may recall, there was the \$10
24 million of utilities posted under Section 366 of the
25 Bankruptcy Code, and a prior ruling on a disputed issue on

1 the APA between he estate and Transform. The Court had
2 found the utility deposits, at least the allocable portion
3 relating to the store's purchase by Transform, were
4 transferred to Transform under the APA. So they are not
5 relinquishing their rights to that \$5.3 million, which will
6 now come back to the estate. So that gets us for sort of
7 cash delivery of \$18.3 million.

8 In addition, pursuant to the settlement, the
9 estate will get to retain the benefits and prior payments of
10 the interim settlements and prior rulings -- that's
11 approximately \$45 million -- as well as amounts that
12 Transform has paid on account of the assumed liabilities
13 under the APA to date. And that's roughly \$160 million, and
14 we detailed that in the motion and Mr. Griffith's
15 declaration.

16 Finally, there were \$2 million, approximately, at
17 this point of what we call the escheatment funds, or the
18 escheated funds, that are sitting in an escrow, and
19 potentially parties can come that had received a check, come
20 and sort of claim the check. If that were to happen, when
21 he then goes to Transform to get reimbursed. If not, and
22 the passage of the escheatment period occurs, the money then
23 comes to the estate.

24 So, Your Honor -- and this is all sort of no more
25 risk of appeals and no further litigation, which we think

1 makes very good sense, and sound business judgment of the
2 Restructuring Committee. But we'll also note another key
3 term is that the estate is to receive the payment within
4 three days of entry of the Court's order approving the
5 settlement. So, hopefully, if Your Honor does approve the
6 settlement and the Court order is entered today, we would
7 anticipate payment by January 31st, by the end of this week.

8 THE COURT: And you've also resolved the tax --

9 MR. SINGH: Yes, Your Honor.

10 THE COURT: -- refund issues?

11 MR. SINGH: That's right, Your Honor. That's --
12 so this particular check is baked into the \$18.3 million
13 amount that was given that's now going to be sent back to
14 the estate. Going forward, we're essentially agreeing as to
15 what the APA says, and the parties' intent with respect to
16 those provisions relating to tax refunds. Anything pre-
17 closing that was accrued comes back to the estate. Anything
18 post-closing is Transform property.

19 THE COURT: Okay.

20 MR. SINGH: So, Your Honor, unless you have any
21 questions -- the other parties are here. 20:46 I don't know
22 if anybody wants to make a statement.

23 THE COURT: Well, I did -- obviously, I dealt with
24 a whole host of litigation issues over several months. So
25 at some level, this is something I'm quite familiar with.

1 But I just want to make sure I fully understand what the
2 parties are settling here.

3 The remaining issues, as I recall, were all that
4 are being -- the main open issues, that involves a complex
5 accounting process, basically, from Transform's point of
6 view, would give rise to schedule set off rights, right?

7 MR. SINGH: Correct.

8 THE COURT: Credits against what they would
9 otherwise have to pay?

10 MR. SINGH: Correct.

11 THE COURT: And this, I guess, goes to the aspect
12 of the agreement that is the one that's, I think, primarily
13 in its favor, which is the full and final resolution of its
14 remaining obligations to make any payments other than care
15 costs in respect of other payables, assumed 503(b)(9)
16 liabilities, severance reimbursement, and ordered inventory.

17 MR. SINGH: Right.

18 THE COURT: So, I take it from Mr. Griffith's
19 declaration that on those amounts, separate and apart from
20 care amounts, they've paid \$160 million?

21 MR. SINGH: That's right. Exactly, collectively.

22 THE COURT: What do the Debtors contend remain --
23 leave aside the ordered inventory -- what amount of payables
24 --

25 MR. SINGH: Will remain?

1 THE COURT: Yeah.

2 MR. SINGH: Sure. So, Your Honor, there was, out
3 of the 166 assumed liabilities, which was, you know, the --
4 which is called the 166 dispute --

5 THE COURT: Right.

6 MR. SINGH: -- they paid 151.5.

7 THE COURT: Right.

8 MR. SINGH: Right? The remaining amount, they
9 were obligated to pay with respect to assumed 503(b)(9)
10 claims and severance claims, approximately 100 -- or not
11 approximately -- I think the cap was exactly hundred and
12 \$139 million. Of that, the estate had conceded that there
13 was a prepaid inventory shortfall of at least -- excuse me -
14 - of \$55 million. Transform argued it was at least 55
15 million and higher, but at \$55 million. So that gets you to
16 84. They've paid another \$7 million with respect to
17 503(b)(9) claims, as part of the cure process. So \$77
18 million remains, Your Honor --

19 THE COURT: Right.

20 MR. SINGH: -- in terms of their outstanding
21 assumption obligations. Now, against that, there was a
22 potential for an offset with respect to any shortfall of the
23 specified receivables, which is an open dispute --

24 THE COURT: Right.

25 MR. SINGH: -- that we are resolving.

1 THE COURT: Right.

2 MR. SINGH: And Your Honor had preliminarily found
3 -- and this was an issue for the examiner -- that the
4 specified receivables, we needed to actually -- we, the
5 estate, needed to actually deliver true receivables --

6 THE COURT: Right.

7 MR. SINGH: -- as opposed to --

8 THE COURT: Actual value.

9 MR. SINGH: Actual value --

10 THE COURT: Yeah, right.

11 MR. SINGH: -- as opposed to what was showing on
12 the books and records --

13 THE COURT: Right.

14 MR. SINGH: -- and at the time of the -- at the
15 time of this APA. And so that 77 -- the estate, from our
16 perspective, had a negative ruling with respect to that and
17 we kind of had to make that up, or at least we expected that
18 there would be a substantial deduction to that amount, given
19 the Court's prior ruling. So, that's where we were when we
20 entered into the settlement agreement.

21 THE COURT: So aggregate \$92 million before the
22 settlement, because there's roughly 15 million --

23 MR. SINGH: Right.

24 THE COURT: -- plus 77?

25 MR. SINGH: Exactly. Fifteen on the 166 and 77 --

1 THE COURT: And then there are the offsets that
2 were asserted --

3 MR. SINGH: Exactly. Which --

4 THE COURT: -- for --

5 MR. SINGH: -- will be fully and finally resolved.

6 THE COURT: Right.

7 MR. SINGH: There is no more amounts --

8 THE COURT: And --

9 MR. SINGH: -- that we have to pay.

10 THE COURT: -- Transform basically took that below
11 zero?

12 MR. SINGH: Exactly.

13 THE COURT: Their assertion was?

14 MR. SINGH: Their assertion was it was below zero.

15 THE COURT: Okay. I had asked earlier for the
16 parties to check on what severance wasn't paid. I had been
17 told, I think, that it had been paid, so --

18 MR. SINGH: That's correct, Your Honor. We did
19 file a notice --

20 THE COURT: Right.

21 MR. SINGH: -- and I think we (indiscernible) with
22 chambers. Post-petition severance has all been paid.

23 THE COURT: Right.

24 MR. SINGH: I think what some of the letters that
25 Your Honor may have received and some confusion was there

1 are pre-petition severance amounts, including potentially
2 priority amounts that have not been paid. That wasn't
3 Transform's obligation.

4 THE COURT: But that wasn't covered by the APA.

5 MR. SINGH: That's right. That's an estate issue
6 that we'll have to --

7 THE COURT: So when we're talking about the
8 release here, it does include the severance reimbursement
9 obligations, but those have been paid. So really --

10 MR. SINGH: Right.

11 THE COURT: -- effectively, what beings settled is
12 the non-cure assumed 503(b)(9)s, the other payables, and
13 then the ordered inventory and the --

14 MR. SINGH: Not disputed --

15 THE COURT: -- the accounting issues?

16 MR. SINGH: That's exactly right.

17 THE COURT: All right. And of course, bound up in
18 that was Transform's contention that the payable -- I'm
19 sorry -- the liabilities were created artificially, along
20 with the payables.

21 MR. SINGH: That's right. That's right. Which is
22 an issue that Your Honor heard --

23 THE COURT: Right.

24 MR. SINGH: -- oral argument and was briefed on.

25 THE COURT: And the open issue, all for this was,

1 of course, subject to appeal, except where the parties had
2 previously settled pieces of --

3 MR. SINGH: That's right.

4 THE COURT: -- was whether the parties did an
5 actually -- or agreed to actual valuations on this or
6 hypothetical book entry valuations.

7 MR. SINGH: That's right. And Your Honor, the
8 other --

9 THE COURT: Tied into the fact that Transform was
10 buying the business and --

11 MR. SINGH: Right.

12 THE COURT: -- the theory that they proposed,
13 which was not -- which had some real merit to it, as I
14 found, is that they wouldn't have agreed to hypothetical
15 valuations when buying a business.

16 MR. SINGH: Correct, Your Honor. And the other
17 issue that would have been appealed, if, you know --
18 although we believe we had a stronger argument -- was
19 whether there was a separate --

20 THE COURT: The whole --

21 MR. SINGH: -- 166.

22 THE COURT: The whole 166 in the first place.

23 MR. SINGH: And to the extent they were right,
24 then the \$151 million that they paid, either they had a
25 claim --

1 THE COURT: Right.

2 MR. SINGH: -- or substantial setoffs.

3 THE COURT: That would've been a complete setoff
4 on top of the other setoffs.

5 MR. SINGH: Exactly.

6 THE COURT: Right. Okay. All right. So, I don't
7 know if anyone has anything more to say on that aspect of
8 this.

9 MR. SINGH: Mr. O'Neal may. But just before I
10 cede the podium, I did want to note clearly the release. As
11 I'm sure Your Honor saw, there's carveouts --

12 THE COURT: Yes.

13 MR. SINGH: -- you know, the 507(b) appeal is
14 carved out. It's continuing on. The litigation being
15 handled by the Creditors' Committee is carved out --

16 THE COURT: Right.

17 MR. SINGH: -- as well as a few other things that
18 we've identified --

19 THE COURT: Right. Well, there's a -- and then
20 that's the express carveout. There's another express
21 carveout, because the mutual release, which is in Paragraph
22 2, says, "Except as provided in Sections 2(c) or (d)" --
23 that's separate and apart from the Section (b), which is what
24 you were referring to just now --

25 MR. SINGH: Right.

1 THE COURT: -- Section (c) says, "For the
2 avoidance of debt, except with respect to the released
3 claims, as provided in 2(a), nothing herein shall prejudice
4 the rights of any party to enforce its rights under the
5 APA.", et cetera.

6 MR. SINGH: Right.

7 THE COURT: And then there's the last carveout in
8 (d). Okay.

9 MR. O'NEAL: Good morning, Your Honor. Sean
10 O'Neal, Cleary Gottlieb, on behalf of Transform. I'll be
11 brief. Really, the negotiations that have allowed us to
12 reach this result today really began almost the moment that
13 we signed the APA. I do want to just make three quick
14 comments.

15 I want to be clear that cure amounts are not being
16 released under the settlement agreement. I think that's
17 important to some of the vendors who had called us. And I
18 just want to be clear that we're not purporting to say that
19 our obligations to pay cure amounts, to the extent there
20 are, are being released by this.

21 Secondly, in terms of severance, it turns out that
22 not only was severance paid, any severance that we would be
23 potentially obligated to pay had been paid, but in addition,
24 all of the parties agreed that there was a shortfall for the
25 prepaid inventory. And that was at least \$55 million. And

1 as a result of that, severance liability was kind of at the
2 top of the list of items.

3 So in the event that we -- there was a shortfall,
4 we would not be obligated to pay, it could be a dollar-for-
5 dollar reduction for severance, so --

6 THE COURT: But you've paid that?

7 MR. O'NEAL: We didn't pay. I mean, we didn't
8 have to pay it --

9 THE COURT: Right.

10 MR. O'NEAL: -- because it was paid by the estate -
11 -

12 THE COURT: It was paid by the estate.

13 MR. O'NEAL: -- but we would never have had an
14 obligation in the first place because of the shortfall,
15 which was an agreed shortfall.

16 THE COURT: Right.

17 MR. O'NEAL: And then, lastly, I do want to do say
18 there's another important aspect of the settlement agreement
19 is the Debtors' obligation to deliver some fee parcels. We
20 call them the "lurking --

21 THE COURT: You have a great name, the "lurking
22 fee parcels," yeah.

23 MR. O'NEAL: Yeah. They've been lurking for
24 sometime. And so under the settlement agreement, those will
25 be delivered to us, I think, within five business days after

1 the release date. I do want to note that there's -- there
2 is one outstanding potential dispute, but I think we'll get
3 -- I think we'll resolve it. It relates to one of the
4 Memphis parcels. The Memphis -- there's one -- this is a
5 Memphis parcel that is not identified in the -- in the
6 schedule that's attached to the APA. We're continuing to
7 have discussions about that particular parcel. We believe
8 we purchased it for the same reason -- on the basis of the
9 same arguments we made with respect to Hoffman Estates. I
10 think we'll be able to resolve it, but I did want you to
11 know that there could be a lurking issue about one of the
12 lurking --

13 THE COURT: So that isn't part of the release?

14 MR. O'NEAL: Not at present, but, like I said, I
15 believe that we'll be successful when we --

16 THE COURT: And Mr. Singh just said he agrees it's
17 not part of the release.

18 MR. O'NEAL: That's correct.

19 THE COURT: Okay. So I had a couple of other
20 questions, you dealt with my main one. One part of this is
21 the resolution of what tax refunds go to the Debtors and
22 what go to Transform. The Debtors -- I just signed off on
23 this -- given where they are on the case, are basically --
24 they're being staffed by a II, I guess that's how they
25 describe themselves.

1 MR. O'NEAL: M-III.

2 THE COURT: M-III and M-III -- excuse me -- or M-
3 III. How are the debtors going to monitor that these
4 refunds are being --

5 MR. SINGH: So we actually have a mechanic, Your
6 Honor, in this settlement agreement, hang on one second.

7 THE COURT: The parties are supposed to report it
8 and turn over.

9 MR. SINGH: Yeah. Exactly. There's a reporting
10 mechanic where Transform is going to report to the estate
11 basically checks that are coming in from various taxing
12 authorities and report to us on a quarterly basis, Your
13 Honor. I think that reporting requirement goes out five
14 years

15 MR. O'NEAL: Until 2024.

16 MR. SINGH: Right. Until 2024 so that there will
17 be an ongoing reconciliation between --

18 THE COURT: Is there a way just to notify the
19 taxing authorities so that you can actually just get it from
20 them directly? I mean, as I look at this, these -- the
21 right to the refunds has been assigned as part of this.

22 MR. SINGH: Correct.

23 THE COURT: So it really is the respective
24 property of, you know, the Debtors' tax refunds or the
25 Debtors' property and the Transform refunds are Transform's

1 property. Is there any way to notify the taxing authorities
2 that this is -- to send the check to them?

3 MR. O'NEAL: Yeah. Your Honor, and I just want to
4 be clear, it's a mutually reporting obligation.

5 MR. SINGH: Yes.

6 MR. O'NEAL: So if the debtors get stuck.

7 THE COURT: No. I understand, this reporting --
8 but I just, you know, just going in the future, I don't know
9 if M-III will be around in 2024 here. I don't know where
10 Transform will be in 2024. If there's a way to --

11 MR. O'NEAL: I think we can discuss with the
12 estate a, you know, a mechanic for that. I do -- we have,
13 for example, one of -- -- it wasn't a taxing authority, but
14 a landlord reached out to us, and told us that they had
15 anticipated sending a tax refund, and they wanted to know
16 who to send it to M-III. So --

17 THE COURT: Yeah. There will be times when you've
18 got to just rely on the reporting mechanism. But I would
19 think if there's -- if there's an ability to notify tax
20 authorities, the parties should bill that in, do a
21 supplement.

22 MR. O'NEAL: We'll discuss that. I think the only
23 -- it'll be a careful communication because we would want to
24 be sure that --

25 THE COURT: Of course.

1 MR. O'NEAL: -- it's helpful to the taxing
2 authorities to know what they need to do.

3 THE COURT: Right.

4 MR. SINGH: Yeah. Your Honor, I think we can work
5 something out on that.

6 THE COURT: And related to that, if the next
7 provision -- well, it's the next provision in the summary,
8 but it appears in paragraph 8, which is the termination
9 provision. Most of the benefits of this agreement happen
10 right away on the release date, but there's some ongoing
11 obligations. And I didn't understand the -- the operation
12 of the termination provision, if Party A breaches the
13 agreement, this provision says that both parties' rights, as
14 they existed prior to the agreement, snapback.

15 MR. O'NEAL: Correct, Your Honor.

16 THE COURT: And it seems to me that if one party
17 breaches, the other party should have the option of saying,
18 I'm going to enforce this agreement or it should snapback.

19 MR. SINGH: Well, yes, Your Honor. Well, the
20 snapback, just the way it relates back to the release, the
21 release time only occurs if they pay. So once they make the
22 payment, then the release kicks in. So the way the snapback
23 works is either Transform doesn't pay, right, in which case
24 we snapback to our original rights or they pay and Transform
25 or some representative of Transform with authority, seeks to

1 claw back the payment itself. It's not the remaining
2 obligations, right, or any of the benefits that the estate
3 is getting under the settlement, so if there's a clawback
4 right. I mean, there's a mutual snapback. But essentially
5 it all really ties to the \$18.3 million, and if that is not
6 paid --

7 THE COURT: Well, let's just say there's a \$2
8 million tax refund that Transform doesn't notify you about,
9 doesn't take the necessary steps --

10 MR. SINGH: Then I think that just a breach of
11 contract that we --

12 THE COURT: I mean, I think it says each party
13 acknowledges and agrees that each other party shall obtain
14 and may assert and prosecute all of its APA claims for the
15 full amounts.

16 MR. SINGH: Right. Your Honor, but the lead in
17 says for the avoidance of doubt, if this agreement
18 terminates, which it only automatically terminates if they
19 don't pay within three days.

20 THE COURT: Right.

21 MR. SINGH: Or if the settlement amount, which is
22 the \$12 million. The adequate assurance deposit, any
23 amounts paid under the APA, the prior rulings of the injured
24 settlements are called back. So if there was a dispute
25 relating to the tax refunds going forward, this provision

1 doesn't apply. We would just have a breach or they would
2 have a breach of contract claimed against the estate, and we
3 would have one against Transform. Again, it's essentially
4 to make sure that we get the benefit of the payment that's
5 required to be made now.

6 THE COURT: I understand that.

7 MR. SINGH: And we keep the prior payments.

8 THE COURT: But, I mean, normally if someone
9 breaches, you often structure a right, including if the
10 release date doesn't occur. I'm assuming it will, it's like
11 three days --

12 MR. SINGH: Three days.

13 THE COURT: -- from now, but assume it doesn't.
14 Shouldn't each party either have the option to either go
15 with this agreement or go back to square one?

16 MR. O'NEAL: I think the issue, Your Honor, is
17 that we want certainty that we have an agreement. If we
18 agree to the agreement, then we'll -- everybody will
19 preserve their rights, but we're not -- we don't want to
20 them eliminate the full benefits of the settlement. You
21 would simply retain the portions of the settlement agreement
22 that haven't been breached. And to the extent there's a
23 breach, then there would be a cause of action. But this
24 language was actually very carefully negotiated. It was
25 very important for a specific reason, which was that if we

1 did have an approval order. And, for some reason, there
2 wasn't a payment made, there would be a snapback. The
3 snapback was very much negotiated to only deal with the
4 issue if there's a nonpayment or a clawback.

5 THE COURT: Okay. All right. Do you agree with
6 that Mr. Dublin?

7 MR. DUBLIN: Phil Dublin, Akin Gump for the
8 committee. Yes, Your Honor, we understand your point, which
9 is in in three days, if Transform doesn't pay, the \$12
10 million that we should have the option of going after them
11 for the \$12 million or reinstating all the litigation.

12 THE COURT: Right.

13 MR. DUBLIN: We expect them to pay the money in
14 three days. It wasn't something that we were overly
15 concerned about. We were more concerned about future events
16 of what may happen with Transform for reasons we set forth
17 in our statement.

18 THE COURT: And you're perfectly happy to be just
19 going back to square one as to those future events? Having
20 the money in hand at that point.

21 MR. DUBLIN: If we have the money in hand --

22 THE COURT: As opposed to having it --

23 MR. DUBLIN: -- and then there's a \$2 million
24 dispute over a tax refund, then we'll go after the million,
25 not reinstate all of the prior litigation and have to give

1 back the \$4 million.

2 THE COURT: Right. But, no, I'm just focusing on
3 the clawback point. So you have the money in hand, and in
4 response to a clawback argument, you say, well, we have all
5 our claims.

6 MR. DUBLIN: Yes. Because the clawback really
7 focuses on a potential insolvency then for Transform.

8 THE COURT: I understand.

9 MR. DUBLIN: And then we have to give back that
10 money as a preference then we're going to want to upside the
11 amount of our potential claims back against Transform above
12 \$12 million.

13 THE COURT: Correct. Good. Okay. All right.

14 MR. DUBLIN: Thank you, Your Honor.

15 THE COURT: And you're not really given any
16 specific property interests here, you're given payments.

17 MR. DUBLIN: Correct.

18 THE COURT: So that makes sense then. All right.
19 Okay. I think that -- okay. Let me just double-check, but
20 I think that takes care of all my questions. All right. So
21 unless anyone has anything more to say on this motion, I
22 will grant the motion. It involves -- well, the settlement
23 agreement that is, provides for a comprehensive settlement
24 of numerous litigation claims growing out of the asset
25 purchase agreement between the parties, many of which I had

1 previously decided, but some of those were on appeal. And
2 on appeal with respect to substantial sums at issue. And
3 the remaining open portion of which presented difficult and
4 potentially risky determinations for the Debtors' estates.

5 Simply in light of the merits, it appears to me,
6 based on my knowledge of the litigation as well as, of
7 course, the facts that this motion is unopposed, after
8 review by parties who have not hesitated to make their
9 positions known in the case, that the settlement is a fair
10 resolution of the outstanding issues as far as the merits
11 are concerned. In addition to that, it's clear to me that
12 the remaining open litigation issues, before me, involve
13 time-consuming and expensive determination mechanisms, even
14 with the appointment of the examiner.

15 And, well, obviously, appellate litigation would
16 be less expensive -- expensive delay over that set of
17 appeals as well. Finally, there is a concern, given that
18 the Debtors, at this point, have a confirmed plan and
19 minimal staffing, as well as ongoing business risk with
20 respect to the other side -- Transform -- as to ultimate
21 collections should the Debtors prevail on all their
22 remaining open positions. Given the immediate benefits of
23 the settlement, including substantial cash payments, and
24 that cessation of the ongoing litigation with me locking in
25 of the prior payments made by Transform, I have no

1 difficulty in finding that this settlement is a fair and
2 reasonable resolution of the parties' dispute and in the
3 best interest of the estate and creditors. So I will grant
4 the motion and enter the proposed order that was submitted.

5 MR. SINGH: Thank you, Your Honor. We'll submit
6 that today. Your Honor, there is one housekeeping issue
7 with respect that's sort of related to this motion. We did
8 file a motion in aid of execution of the plan that
9 authorizes, M-III, Mr. Meghji --

10 THE COURT: I think I sent that in yesterday to be
11 entered.

12 MR. SINGH: Perfect, Your Honor. Thank you. That
13 will allowing to sign the remaining pages and submit that to
14 the trustee.

15 THE COURT: Right. You can follow this lead, but
16 I sent it in yesterday afternoon.

17 MR. SINGH: Thank you, Your Honor. We'll take
18 care of that.

19 THE COURT: Given that there were no objections.

20 MR. SINGH: Yes.

21 THE COURT: And the objection period had expired.

22 MR. DUBLIN: Your Honor, Phil Dublin, Akin Gump,
23 for the Committee. Two things. One, sorry about my watch
24 going off. I don't know how to control it, but I'll figure
25 it out before the next court.

1 THE COURT: That's all right. Was it telling you
2 to walk around?

3 MR. DUBLIN: It was telling me to leave so I don't
4 bother Your Honor while you were reading your ruling. And
5 if it's okay, Your Honor, if we could be excused, we don't
6 have a role with the rest of the agenda.

7 THE COURT: That's fine. Sure.

8 MR. DUBLIN: Thank you.

9 THE COURT: Okay. This is more of a reporting
10 issue or a status issue, Mr. Singh. And you noted that some
11 of the representatives of the administrative expense
12 claimants contacted you on this motion. As I view this
13 motion, this is a motion that brings cash into the estate.
14 The settlement doesn't allocate it anywhere, it brings cash
15 in.

16 MR. SINGH: That's right, Your Honor. It brings
17 in cash to allow us to sort of hit the minimum conditions
18 through the (indiscernible) that's really going to be the
19 main use of the funds at this point; although, you know, it
20 sort of just goes into the (indiscernible) estate, and we
21 use it for whatever we need it for, Your Honor. But
22 frankly, it's really going to be allocated for
23 administrative expenses and distributions.

24 THE COURT: Right. And is that process ongoing,
25 as far as dealing with the administrative expense, creditors

1 and --

2 MR. SINGH: Yes. There's a reconciliation process
3 that's ongoing with respect to the claims. It didn't get
4 reconciled, you know, by the time of the first round. We're
5 in discussions with Foley firm. Mr. Labov is here as well.
6 We're in discussions with them in keeping them abreast about
7 the next second distribution. We haven't exactly set down a
8 time for that, Your Honor, but we do anticipate that it'll
9 be in the next hopefully month or two is what we're aiming
10 to have it done, so the reconciliation process with the
11 parties, and that's moving along quite quickly. And if
12 you'll recall, there's also the need for the -- or the
13 appointment of an administrative claims representative as
14 part of the settlement agreement.

15 Mr. Labov and his firm have been taking the lead
16 role in that, and they're corralling the administrative
17 creditors. And I believe we do expect hopefully soon to
18 announce a representative and bring them up to speed
19 (indiscernible).

20 MR. LABOV: Good morning, Your Honor, Paul Labov,
21 Foley & Lardner, on behalf of the administrative claims, the
22 ad hoc group. Correct, the inbounding that Your Honor was
23 referring to came to our firm. There was a half dozen to a
24 dozen questions as to how the settlement played into the
25 contribution, how the two meshed up. We received pretty

1 comprehensive answers from both M-III and the Debtors. We
2 didn't need to ask additional questions. We have no
3 objections at this time, and we continue to get information
4 from Mr. Singh and Mr. Meghji.

5 And so with respect to the admin representative,
6 the notice went out for the plan, per Your Honor's --
7 directed that the confirmation hearing. We've given every
8 party until, I think, this Thursday. Every party that
9 received an initial distribution until this Thursday to put
10 in their request for a particular administrative claims
11 representative. We've received a couple of them so far.
12 We've received mostly questions about whether or not these
13 people are going to get paid. But -- but -- which is
14 totally understandable, but -- but on Thursday, we'll finish
15 the process. We'll put it to the committee, and we'll speak
16 to the Debtors to come up with this.

17 THE COURT: Okay. And the election procedure, the
18 opt-in, opt-out, say nothing procedure, that's completed at
19 this point.

20 MR. SINGH: That, at this point, is completed, so
21 we know the buckets, Your Honor, who's opted in, who's opted
22 out, and who's in between. And it's now -- and, Your Honor,
23 you know, if the Court prefers, we can certainly give an
24 update at the next hearing of kind of tracking --

25 THE COURT: That's probably a good idea. I mean,

1 related to that, and I know we're dealing with omnibus claim
2 objections later in the agenda. But there was some back-
3 and-forth with Chambers last week about how it seemed
4 premature to deal with some of the 503(b)(9) issues --

5 MR. SINGH: Right.

6 THE COURT: -- without having sort of a
7 comprehensive approach to it. So I think as was
8 contemplated in the confirmation hearing, I just wanted to
9 make sure that that process are ongoing so that those issues
10 can be dealt with efficiently. So focusing for the next
11 omnibus hearing on where the Debtors stand with both the
12 reconciliation process, whether there is going to be a need
13 for litigation of those issues --

14 MR. SINGH: Certainly, Your Honor.

15 THE COURT: -- that's important too.

16 MR. SINGH: We can -- we can provide an update on
17 where we are. I asked (indiscernible) confirmation on
18 essentially on getting to the effective date and giving the
19 Court an update on that as well as the claims process,
20 generally speaking.

21 THE COURT: Okay. And then -- I don't think this
22 was stated on the record. But most of the money that's
23 coming in as a result of the settlement, wasn't in the
24 projections that I had at the confirmation hearing.

25 MR. SINGH: That's correct. So this is all, you

1 know, upside at this point.

2 THE COURT: Right. Okay. All right. Thank you.
3 All right. So should we then move to the Hain Capital --

4 MR. SINGH: Yes, Your Honor. I think some folks
5 are going to leave, including some of my colleagues, if
6 that's okay, Your Honor.

7 THE COURT: Okay. Sure.

8 MR. SINGH: And, Your Honor, I just got an update
9 from Mr. Griffith. Your Honor, they're double-checking on
10 whether there were payments of those amounts. We understand
11 that (indiscernible) clear, but we'll have the final answer.
12 I think maybe some of those or all of those may have been
13 paid, but may not have been intended to be paid.

14 THE COURT: All right.

15 MR. SINGH: So I don't have all the records in
16 front of me, but they're figuring that out right now. And,
17 you know, I think we understood the Court's ruling that that
18 was not -- that's probably not something that they should
19 have been paying for.

20 THE COURT: Right. Right.

21 MR. SINGH: So I think we can adjust -- adjust
22 that as soon as I get confirmation from Mr. (indiscernible)
23 who just stepped out.

24 THE COURT: Okay. Very well.

25 MR. SINGH: Okay. Thank, Your Honor. Your Honor,

1 that does bring us to the next matter on the agenda, which
2 is the stipulation and settlement agreement between the
3 estate, Transform and Hain Capital. Your Honor, we did have
4 an objection to this motion, which is why it's on for
5 hearing -- Winia Daewoo -- and I think, Your Honor, the
6 stipulation is pretty straightforward, this related to an
7 assumption dispute. And at the end of the day from the
8 estate's perspective, we're getting, I think, \$250,000 back
9 to the estate, and we have to deal with the claim because it
10 was not assumed, and we looked at it pretty closely. And we
11 believe that it was not assumed. And there's no objection
12 to the merits of the stipulation by anybody. The Winia
13 Daewoo objection really relates to one provision in the
14 settlement agreement, which is simply a reservation of
15 rights that says that the Debtors -- Transform, and Whitebox
16 -- are reserving rights with respect to parties that
17 (indiscernible) is not a party to the settlement agreement.

18 And I think that's where we have the objection by
19 Winia Daewoo who now will confirm for the Court as did in
20 our reply, we're not seeking any court approval or blessing
21 with respect to the merits of those claims, whether they're
22 valid, should be deemed release, et cetera. They are what
23 they are, all we're saying is that there was an intended
24 release of Winia Daewoo here. And if there's a later
25 dispute that comes up in another court, that court or this

1 court will address that issue.

2 THE COURT: Okay.

3 MR. SINGH: So I'm happy to cede the podium to the
4 objecting party.

5 THE COURT: Okay.

6 MR. CLARK: Your Honor, Perry Clark for Winia
7 Daewoo. The issue here is that the portion that we object
8 to reads the settlement does affect, restrict, implicate or
9 impair the rights that each of the settling parties may have
10 with (indiscernible) claim. And our position at base is
11 that to the extent the settlement affects the rights of
12 these parties, that the effect should be determined by
13 whatever tribunal is adjudicating these claims. So the
14 extent it would -- the parties are taking a "vanilla"
15 reservation of rights, you know, there is language in this,
16 where Debtors and Transform are mutually reserving their
17 rights. And our reading of this, extends beyond that in an
18 attempt to say that this settlement cannot be used to
19 restrict our inherent rights. And our feeling is and
20 manifestation is that there was litigation brought
21 potentially by the settling parties. And our intention
22 would be depending on what those claims are to use the
23 stipulation and settlement to potential reduce or eliminate
24 the liability my client for those claims.

25 THE COURT: So you're saying it's not really a

1 reservation of rights, it's more than that.

2 MR. CLARK: That is -- that's what we're saying.
3 Because the reservation of rights, I mean, and certainly you
4 can reserve a right. But our position is that this
5 stipulation may well implicate, it may well impair, it may
6 well reduce the recovery they could get for those rights,
7 and that's the genesis of the objection.

8 THE COURT: On the -- I'm not sure -- this is just
9 to be a so ordered stipulation, right, as opposed to a
10 separate order?

11 MR. SINGH: That's right, Your Honor.

12 THE COURT: Do the parties have any problem in
13 saying whether in Section -- paragraph 6 saying that Hain,
14 the Debtors and their estates, and Transform fully reserve
15 any rights, claims or defenses against any third parties,
16 including against Winia Daewoo, and do not intend by
17 entering into this stipulation to waive any such rights,
18 including, but not limited to potential Chapter 5 causes of
19 action? You know, carry on with the rest of the paragraph.
20 It's the first -- it's the first clause that's really the
21 issue here, does not affect -- it might affect. I mean, I
22 haven't decided that yet.

23 MR. SINGH: Your Honor, I think we're fine with
24 that revision. I've just gotten nods from the parties.

25 THE COURT: Okay. All right.

1 MR. LABOV: That's the whole point here was just
2 to --

3 THE COURT: Just to reserve all rights?

4 MR. LABOV: Yeah, right, exactly.

5 THE COURT: All right. And defenses, et cetera?

6 MR. SINGH: Right. Exactly.

7 THE COURT: Okay. So I think we could deal with
8 that. I think we can revise it to reflect that. I'm not --
9 I mean, I don't -- as an S & E, I'm not sure how this would
10 affect in a good way -- Winia Daewoo -- but that's for
11 another day.

12 MR. SINGH: Thank you, Your Honor.

13 THE COURT: Okay.

14 MR. SINGH: So we can make that revision and
15 circulate it to counsel (indiscernible).

16 THE COURT: All right. I think I got it right
17 when I was saying it out. So you could just get the CD of
18 this and replay it.

19 MR. SINGH: Yeah. I think we got the gist of it
20 at least to --

21 THE COURT: Okay. I don't have any problem with -
22 - if it encouches the reservation, in leaving in the
23 language that begins with the phrase including, but not
24 limited to, to the end of the paragraph, it just should be
25 turned into a reservation or rights and defenses.

1 MR. SINGH: Right.

2 THE COURT: Yeah.

3 MR. SINGH: Right. It's a reservation of rights
4 and not intended to release, right.

5 THE COURT: Yeah, there's no intent to release,
6 yeah.

7 MR. SINGH: I think that's --

8 THE COURT: Okay. It may Winia Daewoo -- they
9 argue, well, that's fine, but the legal effect is to
10 release, that's a separate issue.

11 MR. SINGH: Okay.

12 THE COURT: Which isn't being decided.

13 MR. SINGH: And, Your Honor, I misspoke, the
14 payment actually goes to Hain, but it reduces their
15 administrative claim against --

16 THE COURT: Yeah. Their claim is -- their
17 previously agreed claim is further reduced by the 250,000.

18 MR. SINGH: That's exactly right. It doesn't come
19 to --

20 THE COURT: And as far as the merits go, the
21 dispute was really over whether Transform should be deemed
22 to have assumed the agreement for the period that it was
23 being performed. And based on the pleadings, and, again,
24 the absence of an objection on the merits, the \$250,000
25 payment, which indirectly benefits the Debtors' estate, it

1 appears, to me, to be a fair settlement of that issue.

2 MR. SINGH: Thank you, Your Honor. We'll submit a
3 revised stipulation.

4 MR. CLARK: May I be excused, Your Honor.

5 THE COURT: Yes.

6 MR. SINGH: Your Honor, that then takes us to --
7 we do have a few -- apologies -- I just checked with -- Your
8 Honor. We do have a few omnibus objections; although, going
9 forward I (indiscernible), Your Honor, my colleague Phil
10 DiDonato is going to handle this.

11 THE COURT: Okay.

12 MR. DiDONATO: Good morning, Your Honor, Phil
13 DiDonato, Weil, Gotshal & Manges, for the Debtors. We have
14 five omnibus claim objection going forward today, all of
15 them uncontested.

16 THE COURT: And these are one that had previously
17 been noticed, and you're just cleaning up some aspects of
18 the claims that had not been already dealt with in prior
19 orders?

20 MR. DiDONATO: Exactly. So we filed notices of
21 adjournment on these claims just to give us more time to
22 work out with the creditors the open issues. And so we're
23 going forward today because we've determined that we should
24 go forward with (indiscernible) parties. So I'm happy to
25 proceed however Your Honor would like. I can go through

1 each of these individually or we are prepared to submit
2 orders for each of these.

3 THE COURT: Well, I'm going by the agenda, plus in
4 one case, an e-mail that came in after the agenda which said
5 that it turned out that the Microsoft claim had already been
6 dealt with in a prior order. So I'll just go -- I'll just
7 mention each omnibus objection, the claims it's going to
8 pertain to. And if someone is on the phone, they can speak
9 up, if they disagree. But on the first omnibus objection,
10 the matters now have been resolved with regard with the Dun
11 & Bradstreet claims and the LG Electronics claims, and
12 you'll be submitting an order consistent with that.

13 MR. DiDONATO: Yes.

14 THE COURT: Okay. On the first omnibus objection,
15 the first was on satisfied claims. On the fifth omnibus
16 objection, it's reclassification to general unsecured, and
17 that's going forward on an uncontested basis with respect to
18 the Whitebox Asymmetric Partners response. On the sixth
19 omnibus objection, which again, was the satisfied claims
20 basis, it turns out Microsoft had already been dealt with on
21 an uncontested basis in a prior order and the Transform
22 Holdco is now resolved in light of the settlement. And then
23 with regard to the last one covered here, on the sixth,
24 which is Dart Warehouse Corporation, that also is now
25 uncontested as being satisfied, so you can e-mail that

1 order. The seventh omnibus objection, I don't know that the
2 names of the parties -- this is on amended and superseded
3 claims. And it's going forward on an uncontested basis with
4 respect to Claim Numbers: 4744, 1850, 12757, 237463 -- I'm
5 sorry -- 6632, 10065, 1748, 16615, 1544, 5182, and 14489.
6 Let me just confirm with you, you've given each of those
7 claimants notice of this schedule hearing? The need for
8 them to appear and contest if they weren't prepared to go
9 forward, but it's uncontested by them?

10 MR. DiDONATO: Correct.

11 THE COURT: Okay. And then on the eighth omnibus
12 objection, which is on duplicate claims, the -- one of those
13 has been dealt with by notice of withdrawal, and it's going
14 forward on an uncontested basis with respect to Claim
15 Numbers: 4496, 12489, 1630, 1693, and 5109. And I guess
16 it's being adjourned as to David Tomczak and Infiloom.

17 MR. DiDONATO: So I believe the Infiloom and David
18 Tomczak -- those claims are actually withdrawn under the --

19 THE COURT: Notice of withdrawal.

20 MR. DiDONATO: Notice of withdrawal at 6378.

21 THE COURT: All right. Fine. So it's just as to
22 the other five that I went through. And, again, you gave
23 them notice of this hearing, and the need to pursue their
24 objection in light of the Debtors, and they have not
25 contested. So I will enter each of the orders as they're

1 unopposed after due notice, so you can e-mail them to
2 Chambers. Thanks.

3 MR. DiDONATO: Thank you, Your Honor.

4 MR. SINGH: Your Honor, that next takes us to the
5 automatic stay matters. Item Number 20. I'm going to turn
6 this over to Mr. Barefoot who's handling this motion for
7 Transform.

8 THE COURT: Okay.

9 MR. BAREFOOT: Good morning, Your Honor. Luke
10 Barefoot from Cleary Gottlieb Steen & Hamilton for Transform
11 Holdco. Your Honor, Agenda Item Number 20 which is styled
12 as a motion for relief in the automatic stay at Docket 6212
13 is going forward today only a status conference and a
14 scheduling conference. I'm not sure if Your Honor's
15 reviewed the motion papers given the posture.

16 THE COURT: No. I have, and this is the motion by
17 Nina and Gerald Greene, right?

18 MR. BAREFOOT: Correct. As class Plaintiffs in a
19 civil action that was filed in 2017 in the Northern District
20 of Illinois on behalf of a class of purchasers of warranty
21 and protection agreements.

22 THE COURT: Right.

23 MR. BAREFOOT: Your Honor, although, it's styled
24 as a lift-stay motion, it actually, at least in our view,
25 seeks a little bit more than that, in that it doesn't

1 implicate the Debtors or seek to pursue any claims against
2 the Debtors, but rather seeks an interpretation of the APA
3 that would allow pursuit of that existing litigation against
4 Transform.

5 THE COURT: Well, I guess, that was a question I
6 had. It wasn't as clear to me as it was to you that that
7 was what the movements were seeking as opposed to just being
8 careful to make sure that they could proceed against
9 Transform. And then they make their case, whatever it was,
10 in the District Court in Illinois as to whether they had
11 such a claim.

12 MR. BAREFOOT: I mean, Your Honor, I think we made
13 -- I don't think that's a live dispute because we do have a
14 proposed schedule and resolution to address the motion on
15 those grounds. I'm certainly, from our perspective, Your
16 Honor does have exclusive jurisdiction over interpretation
17 of the APA and the sale order and enforcement of the
18 protections those were intended to give to Transform as a
19 free and clear purchaser.

20 THE COURT: Because of the free -- right. Okay.
21 So it's really not a stay issue as opposed to a free and
22 clear issue.

23 MR. BAREFOOT: That's certainly our -- our
24 perspective, Your Honor. But I don't want to get ahead of,
25 you know, the merits of the issues. I really just wanted to

1 address what I think is a proposed schedule to resolve the
2 dispute before Your Honor.

3 THE COURT: Can I -- when you say "proposed," is
4 it proposed by Transform or by both sides?

5 MR. BAREFOOT: What I'm about to say as to
6 scheduling is agreed by both sides subject to Your Honor's
7 approvals on the dates for the process.

8 THE COURT: Okay.

9 MR. BAREFOOT: Your Honor, we've agreed to adjourn
10 the hearing on the merits, to complete some limited
11 discovery, and to schedule an evidentiary hearing. Our
12 proposal -- and I will --

13 THE COURT: On whether the APA actually covers
14 this or not.

15 MR. BAREFOOT: As teed up in their motion. Yes,
16 Your Honor.

17 THE COURT: Okay.

18 MR. BAREFOOT: And in our objection and the
19 related declarations.

20 THE COURT: Okay.

21 MR. BAREFOOT: Your Honor, first in terms of the
22 limited discovery, Transform has agreed to limited document
23 discovery to be produced by Transform solely on the topic of
24 any contemporaneous discussions between the Debtors and
25 Transform on the topic of this Green versus Sears class

1 action during the course of negotiations on the APA. That
2 document discovery is subject to Transform's agreement on
3 reasonable search terms and parameters.

4 Second, Transform, following the production of
5 those documents, will produce Mssrs. (indiscernible) and
6 Rickert for half-day depositions, each on mutually agreeable
7 dates in Hoffman Estates. And then following that, Your
8 Honor, the parties would propose to submit simultaneous
9 briefing of no more than 10 pages one week prior to a
10 hearing date to be set by Your Honor. Backing up against
11 that -- the time that we think it will take to complete that
12 limited discovery, we would ask for that evidentiary hearing
13 to be set sometime in late March at the Court's convenience.
14 We're happy to have it on an omnibus date but given that
15 it's an evidentiary hearing, it may be more convenient if
16 there were other times on the Court's calendar.

17 THE COURT: Okay. You have -- I just want to hear
18 from the other said before I ask questions.

19 MR. BAREFOOT: Thank you, Your Honor.

20 THE COURT: Okay.

21 MS. DAUL: Good morning, Your Honor. Janice Daul
22 on behalf of the Greenes.

23 THE COURT: Good morning.

24 MS. DAUL: As you stated earlier, it's correct
25 that our motion for relief from the stay -- we don't agree

1 with Mr. Barefoot's characterization of it, that it's
2 seeking more than a stay relief. Our goal in seeking the
3 stay relief was simply to make sure that we were going to
4 run a valid stay and kind of reviving that class action in
5 Illinois. And to the extent that Transform objects to our
6 interpretation of the EPA, then that issue could be dealt
7 with either in Illinois or I'm conscious of the fact that
8 this Court has reserved jurisdiction (indiscernible) so --

9 THE COURT: Well, that's the real issue, I think,
10 which is -- I do agree with you that in the lift stay motion
11 you're just seeking to lift the stay.

12 MS. DAUL: Correct.

13 THE COURT: But Transform is pointing out that I
14 have an order that in addition to authorizing the Debtors to
15 enter into it before the EPA has free and clear language in
16 it, and I guess what Mr. Barefoot has proposed which I
17 gather has been agreed to is that the parties, rather than
18 having an extra layer of litigation in Illinois where
19 Transform would tell the Illinois court or maybe come in and
20 tell me that they're violating my sale order, just to deal
21 with the issue in front of me to avoid that extra step.

22 MS. DAUL: Right --

23 THE COURT: Is that right? You're amenable to the
24 schedule that's just been laid out?

25 MS. DAUL: Yeah. I mean, I think that point that

1 there is a fair one and that Your Honor just raised --

2 THE COURT: Okay.

3 MS. DAUL: -- so that's why we have agreed to the
4 schedule that Transform set forth.

5 THE COURT: Okay. So I have two points. It's
6 fine with me to go through that discovery process and
7 eventually end up with an evidentiary hearing. I think it's
8 going to be hard to get a date at the end of March. I have
9 a couple trials scheduled in March that will actually be
10 fairly lengthy. But you can check with Ms. Lee. I don't
11 think this will be a lengthy trial. I think it's like a day
12 -- actually probably less than a day but it will probably
13 will go for the morning through lunch.

14 To prepare to make that trial efficient, just as
15 with the Transform litigation that was recently settled, the
16 parties should, when they're memorializing this, also put in
17 that they will submit the testimony of witnesses under their
18 control by declaration or affidavit a week before the
19 evidentiary hearing with the affiant to be present for cross
20 and redirect as it would go after that.

21 And then, secondly, that they should be -- confer
22 and use their best efforts to agree on the admissibility in
23 some of the exhibits as they can and submit a joint deemed
24 admitted exhibit book a week before the trial as well. You
25 can do a separate book if there are exhibits where there's a

1 dispute as to admissibility and I'll just have it there to
2 streamline the trial.

3 The only other thing I'll say is that I'm
4 assuming, given that you're going forward on this basis,
5 this is not one of the APA issues that's resolved by the
6 settlement I just approved. Or is it? I don't know. I
7 don't want to spend a time but that's an issue.

8 MR. BAREFOOT: Your Honor, Luke Barefoot for
9 Transform. That is certainly not the case that --

10 THE COURT: Okay.

11 MR. BAREFOOT: -- the scope of the release actions
12 relates back to the adversary pleadings and motions to
13 enforce that were before Your Honor.

14 THE COURT: All right. So even though this is --
15 deals with the issue of excluded liabilities and payables,
16 it's not covered.

17 MR. BAREFOOT: Correct, Your Honor.

18 THE COURT: All right.

19 MR. BAREFOOT: It really is an issue between us
20 and the third-party litigation claimants.

21 THE COURT: Well, sometimes that's the case with
22 the other stuff, too. I just wanted to make sure. I didn't
23 want to be wasting time --

24 MR. BAREFOOT: Understood, Your Honor.

25 THE COURT: -- and have that argument come up at

1 the last minute.

2 MR. BAREFOOT: And certainly understood on your
3 directions. We're familiar with those procedures and we
4 will work with your chambers to get an acceptable date. I
5 think we'll probably end up going later rather than earlier.

6 THE COURT: Well, earlier's even worse.

7 MR. BAREFOOT: Okay.

8 THE COURT: So. Because the first trial starts on
9 the 2nd and goes through the 6th, I think. And then there's
10 another one that -- right now, they're starting, I think, on
11 the 20th and going -- they've slotted a few days so -- and I
12 have omnibus hearings on the 16th and 17th. So maybe
13 there's -- maybe she does have time at the end of the month,
14 but I -- anyway just check with her. So you can submit a
15 pre-trial order. I'm not going to have to have another pre-
16 trial conference on this so don't worry about that. Just
17 have the trial date and the schedule you talked about with
18 the additions that I just mentioned.

19 MR. BAREFOOT: Understood, Your Honor. We'll
20 submit that on notice to present.

21 THE COURT: Okay. Great.

22 MR. BAREFOOT: Thank you, Your Honor.

23 THE COURT: Okay.

24 MS. DAUL: Thank you, Your Honor.

25 THE COURT: Okay. Thank you.

1 MS. DAUL: May I be excused?

2 THE COURT: Yes.

3 MR. DIDONATO: For the record, Phil DiDonato,
4 Weil, Gotshal. The last item on the agenda, Your Honor, is
5 the motion from Abel Santiago early for the automatic stay
6 filed at ECF Number 4640.

7 THE COURT: Right.

8 MR. DIDONATO: And the Debtors had previously
9 filed an objection to this in November when we were here
10 last before you on the stay matters at ECF Number 6006. And
11 today we're requesting that the motion be denied
12 (indiscernible)

13 THE COURT: Okay. Is Mr. Santiago's counsel on
14 the phone? No? Okay. I've reviewed the pleadings. In
15 essence, the Debtor's argument is that because there's a \$5
16 million deductible -- I'm sorry -- because in this case, on
17 top of the \$5 million deductible, the coverage has been
18 expired or is expired, that this would be in essence a worse
19 than pyrrhic victory for Mr. Santiago to have the stay
20 lifted because the condition for lifting the stay is that he
21 limit his recovery to insurance. There's no insurance so
22 poor Mr. Santiago would have waived any claim he had against
23 the Debtors and not get anything. In addition to that,
24 given the \$5 million deductible, to the extent the Debtors
25 would have to defend, they would expending hard dollars that

1 they would properly use, at least at this point, for more
2 senior claims -- administrative expenses. So in weighing
3 the Sonnax Factors under in re Sonnax Industries, Inc, 907
4 F2nd 1280, at 1286, and primarily the most important ones,
5 which is the burden on the estate and third parties, in
6 prosecuting or liquidating an unsecured claim, which would
7 be at a substantial cost with very little to no likelihood
8 of any benefit to the claimant, there really is not
9 sufficient cause to lift the stay here -- to let the
10 litigation proceed.

11 As to the importance of the cost and lack of
12 benefit to the claimant, see in re Chittur & Associates, PC,
13 28 U.S. District Lexus 213968 at page 7, STNY, December 18,
14 2018, and in re SunEdison, Inc, 557 B.R.503 309 Bankruptcy
15 STNY 2060, so I think it's probably why counsel for Mr.
16 Santiago hasn't appeared. He's realized that he would get
17 nothing out of this litigation other than causing some pain
18 to the Debtors and their estate which is not a proper basis
19 to lift the stay. So you can email that order to chambers.

20 MR. DIDONATO: We will, Your Honor.

21 THE COURT: I do -- there's -- this -- these
22 Debtors don't have any sort of personal injury claim
23 procedures in place, right, where there's -- where there
24 might be some insurance? There are some years where's still
25 some insurance?

1 MR. DIDONATO: They are -- I believe the pre-
2 petition period in 2018 before the petition date -- that
3 period and then there's also a separate auto liability
4 policy separate from the general liability police where we
5 have lifted the stay for those creditors.

6 THE COURT: Right. So I did enter an order
7 allowing you to do that where the Debtors aren't bearing a
8 burden because of the large deductible and it's just going
9 against the insurance. Is there a -- the reason I'm saying
10 is -- your objection was an omnibus objection that objected
11 to three motion, all that dealt with the more recent policy
12 and they were all well taken. I just didn't know whether
13 they are lots of other people for that policy year and
14 whether anything is being done as far as the year where
15 there is some insurance but there's a high deductible.

16 MR. DIDONATO: So I think with regard to that
17 specific year, I know there a number of claimants out there
18 -- I can't speak to off the top of the head whether or not
19 they're going after that specific time period where there
20 may be insurance available.

21 THE COURT: Okay. Could I -- my question is,
22 you're covering the people who should be covered with the
23 consensual lift stays which I've been entering periodically
24 on a stipulated basis. If there is insurance to be had -- I
25 don't know if it makes sense to reach out to the insurer and

1 say, look, you know, we can start proposing settlements
2 here. But I -- on the other hand, if it's going to get
3 eaten up by the first settlement then it doesn't -- you have
4 to give some thought to it, and I'm not encouraging you to
5 spend a lot of time and effort on it, but it may be worth at
6 least taking a look to see who's in this year, what the
7 insurance that's left is, and maybe spending a few hours to
8 think about how to deal with it on an efficient basis
9 through a process that the insurer that can be involved in
10 without spending a lot of, you know, trial money or
11 anything. I mean, you want to be able to use it to the
12 extent you can.

13 MR. BAREFOOT: Sure.

14 THE COURT: I'm not telling you, again, to spend a
15 lot of money on it, but if the insurer's amenable to just
16 like, okay, you know, submit your claim form to us. We'll
17 review it. If you'll settle it for X in -- within this
18 period and there are ten of you and you're not -- you're --
19 you know, the settlements won't exceed the coverage. It's a
20 fast way to get it over with. Maybe they'll -- you know,
21 maybe that is worth pursuing.

22 MR. DIDONATO: I think we can do that, Your Honor.

23 THE COURT: Okay.

24 MR. SINGH: Your Honor, I think that takes care of
25 the agenda. And finally, I have an answer on --

1 THE COURT: Oh, all right.

2 SINGH: -- this record application. They were
3 paid for that period at the 80 percent which was \$460,000
4 and I've confirmed with Lazard that they will -- that they
5 understand that that amount will not be approved and that
6 we'll either just to docket it on the remaining amount that
7 has to be paid on or they'll get the money back.

8 THE COURT: Well, I'm not sure there is any -- oh,
9 yeah, there is remaining.

10 MR. SINGH: There is -- yeah, there is the one.

11 THE COURT: so that can just be deducted.

12 MR. SINGH: Yeah.

13 THE COURT: And you can deal with that in the
14 order.

15 MR. SINGH: Yeah, exactly. Exactly.

16 THE COURT: That's great.

17 MR. SINGH: We'll do that. So that was -- I think
18 we've got a file -- final answer I'm going to file these,
19 Your Honor.

20 THE COURT: Okay. Very well. Thank you.

21 MR. SINGH: That takes care of it.

22 THE COURT: Okay.

23 MR. SINGH: Thank you.

24 (Whereupon these proceedings were concluded at
25 11:20 AM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

Sonya

Ledanski Hyde

Digitally signed by Sonya Ledanski
Hyde
DN: cn=Sonya Ledanski Hyde, o, ou,
email=digital@veritext.com, c=US
Date: 2020.01.29 16:43:17 -05'00'

Sonya Ledanski Hyde

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330 Old Country Road

Suite 300

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Date: January 29, 2020

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